(15)

Supreme Court, U.S.
FILED
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CLERK

No. 01-1444

In the Supreme Court of the United States

BEN CHAVEZ,

Petitioner,

v.

OLIVERIO MARTINEZ,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 26, 2002
CERTIORARI GRANTED JUNE 3, 2002

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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear at the pages indicated in the appendix to the Petition for a Writ of Certiorari:

Opinion of the United States Court of Appeals
for the Ninth Circuit, dated October 20, 2001 ..... 1a

Order of the United States District Court
for the Central District of California,
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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

98-CV-9313

MARTINEZ,
Plaintiff,

v.

OXNARD, CITY OF, *et al.*
Defendants.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
2/25/00	22	FIRST AMENDED COMPLAINT [1-1] by plaintiff Oliverio Martinez; adding Lopez Art, Maria Pena, Andrew Salinas, Ben Chavez, Ron Zavala; jury demand. Summons not issued (jp) [Entry date 02/28/00]
3/29/00	25	ANSWER filed by defendants Chief Art Lopez esa Chief Lopez Art, Maria Pena, Andrew Salinas, Ben Chavez, Ron Zavala to 1st amended complaint [22-1]; jury demand (rrey) [Entry date 03/29/00]

DATE	NO.	PROCEEDINGS
6/5/00	35	NOTICE OF MOTION AND MOTION by plaintiff Oliverio Martinez for summary adjudication of issues Memo of PA/ Decl of Sonia Mercado and Prop Order ; motion hearing set for 10:00 6/26/00 (lk) [Entry date 06/09/00]
6/5/00	35	STATEMENT of U/Facts and C/Law by plaintiff Oliverio Martinez re motion for summary adjudication of issues [35-1] (lk) [Entry date 06/09/00]
6/12/00	37	OPPOSITION by defendants to plfs motion for summary adjudication of issues [35-1] ; decl of Kevin M McCormick(rrey) [Entry date 06/13/00]
6/12/00	38	STATEMENT GENUINE ISSUES by defendants in opp to plfs motion for summary adjudication of issues [35-1] (rrey) [Entry date 06/13/00]
6/29/00	41	STIPULATION and ORDEP. by Judge Florence-Marie Cooper IT IS SO ORD: dismissing party dfts Harold Hurtt, Lopez Art; dismissing w/ prejudice 2nd, 3rd, 4th, & 5th clms for relief of the 1st A/C as to all dfts (rrey) [Entry date 06/30/00]

DATE	NO.	PROCEEDINGS
7/3/00	42	REPLY by plaintiff in suppt of motion for summary adjudication of issues [35-1] ; decl of F Samuel Heredia (rrey) [Entry date 07/12/00]
7/17/00	45	SUPPLEMENTAL OPPOSITION by plaintiff to dfts oral mot for S/J on qualified immunity (rrey) [Entry date 07/18/00]
7/24/00	46	MEMORANDUM of PA's by defendant Maria - Pena, defendant Andrew Salinas, defendant Ben Chavez, defendant Ron Zavalain support of qualified immunity re minutes [43-1]; Chavez Decl and Devereaux Decision appended in support thereof. (lk)[Entry date 07/25/00]
7/31/00	48	SUPPLEMENTAL REPLY by plaintiff Oliverio Martinez to Dfts oral mot for qualified immunity (ad) [Entry date 08/02/00]

8/31/00	50	NOTICE OF APPEAL by defendant Ben Chavez to 9th C/A from Dist. Court Ord fld 8/1/00 & ent 8/2/00 [47-1] (cc: Jeffrey Held, Law Offices of Alan E. Wisotsky; R. Samuel Paz, Law Offices of R. Samuel Paz; Sonia M. Mercado, Sonia Mercado & Associates; F. Samuel Heredia, Heredia & Associates) Fee: Paid. (pjap) [Entry date 09/01/00]

STATEMENT OF:

OLIVERIO MARTINEZ

INTERVIEWED BY:

OFFICER CHAVEZ

LOCATION:

ST. JOHN'S REGIONAL MEDICAL CENTER

TAPE 1 **SIDE A**

Statement of: Oliverio Martinez

Interviewed by: Officer Chavez

Location: St. John's Regional Medical Center

Tape 1 Side A

****

(Unintelligible background voices)

Chávez:	I think it's Olivero, I'm not sure.	Chavez:	I think it's Olivero, I'm not sure.
	Olivero Martinez.		Olivero Martinez.
	(Unintelligible) Olivera ¿Cuándo naciste?		(Unintelligible) Olivera When were you born?
O.M.:	(Unintelligible)	O.M.:	(Unintelligible)
Chavez:	¿Cuándo naciste?	Chavez:	When were you born?
O.M.:	Yo no me acuerdo.	O.M.:	I do not remember.

(Unintelligible background voices)

Chavez:	Oliverio Martínez. ¿Señor, cómo te llamas?	Chavez:	Oliverio Martinez. Sir, what is your name?
O.M.:	Me duele...	O.M.:	It hurts...

Chavez:	¿Cómo te llamas? Can anyone make out what the words are in his chest?	Chavez:	What is your name? Can anyone make out what the words are in his chest?
Unidentified	M-O-N		
Chavez:	Monique. Hey, Lee can you go check with booking and them run the name Monique across the chest. A tatoo check.		
Unidentified	Ami....amigo, muevate las (sic)-los pies, mueverte.	Unidentified	Fri friend, move the the feet, move.
O.M.:	No puedo.	O.M.::	I can't.
Unidentified	Mueve los pies, mueve los pies.	Unidentified	Move the feet, move the feet.
O.M.:	No puedo, no puedo, no puedo.	O.M.:	I can't, I can't, I can't.
Unidentified	....an 11 by...		
Chavez:	Olivero. ¿Qué pasó? Olivero, dígame qué pasó.	Chavez:	Olivero. What happened? Olivero, tell me what happened.
O.M.:	No sé.	O.M.:	I don't know.

Chavez:	¿No sé qué pasó? (sic)	Chavez:	I don't know what happened (sic)?
(Unidentified medical personnel)			
O.M.:	¡Ay! ¡Me estoy muriendo! ¡Ay! ¿Qué me están haciendo?	O.M.:	Ay! I am dying. Ay! What are you doing to me?
(Unintelligible background voices)			
O.M.:	¡No, ...! (unintelligible scream.)	O.M.:	No, ...! (unintelligible scream).
Chavez:	¿Qué pasó, señor?	Chavez:	What happened, sir?
O.M.:	Me duele mi pie...	O.M.:	My foot hurts...
Chavez:	Olivera. Señor, ¿qué pasó?	Chavez:	Olivera. Sir, what happened?
O.M.:	Me estoy ahogando.	O.M.:	I am choking.
Chavez:	Dígame, ¿qué pasó?	Chavez:	Tell me what happened.
O.M.:	No sé.	O.M.:	I don't know.
Chavez:	"No sé."	Chavez:	"I don't know."
O.M.:	Me duele mi pierna.	O.M.:	My leg hurts.
Chavez:	¿No sé qué pasó? (sic)	Chavez:	I don't know what happened (sic)?
O.M.:	Me duele...	O.M.:	It hurts...

(Tape turns off and on)

Chavez:	Hey, hey mire.	Chavez:	Hey, hey look.
O.M.:	Me estoy ahogando.	O.M.:	I am choking.
Chavez:	¿Puede oir? mire oiga, yo soy Benjamin Chávez de la policía de aquí de Oxnard, mire.	Chavez:	Can you hear? look listen, I am Benjamin Chavez with the police here in Oxnard, look.
O.M.:	Me estoy muriendo, por favor.	O.M.:	I am dying, please.
Chavez:	Ok, sí, dígame qué pasó si vas a morir, dígame qué pasó. Mire necesito decir (sic) qué pasó.	Chavez:	OK, yes, tell me what happened. If you are going to die, tell me what happened. Look I need to tell (sic) what happened.
O.M.:	No sé.	O.M.:	I don't know.
Chavez:	You don't know, ¿No sé qué pasó? (sic) ¿Habló con la policía?	Chavez:	You don't know, I don't know what happened (sic)? Did you talk to the police?
O.M.:	Sí.	O.M.:	Yes.
Chavez:	¿Qué pasó con la policía?	Chavez:	What happened with the police?

O.M.:	Peleamos.	O.M.:	We fought.
Chavez:	¿Huh? Qué pasó con la policía?	Chavez:	Huh? What happened with the police?
O.M.:	La policía me dieron un balazo.	O.M.:	The police shot me.
Chavez:	¿Porqué?	Chavez:	Why?
O.M.:	Porque yo estaba peleando con él.	O.M.:	Because I was fighting with him.
Chavez:	Oh, ¿porqué estaba peleando con la policía?	Chavez:	Oh, why were you fighting with the police?
O.M.:	Me estoy muriendo...	O.M.:	I am dying...
Chavez:	Ok, sí estas muriendo, pero dígame ¿porqué estás peleando, estabas peleando con la policía?	Chavez:	OK, yes you are dying, but tell me why you are fighting, were you fighting with the police?
O.M.:	I don't know.	O.M.:	I don't know.
Chavez:	You don't know, did you get his gun? ¿Agarró la pistola del otro policía?	Chavez:	You don't know, did you get his gun? Did you grab the gun of the other policeman?
O.M.:	Sí.	O.M.:	Yes.

Chavez:	Sí. ¿Querías matar a la policía o qué? (sic)	Chavez:	Yes. Did you want to kill the police or what? (sic)
O.M.:	No.	O.M.:	No.
Chavez	¿Quería tirar balazos a la polícia?	Chavez	Did you want to shoot at the police?
O.M.:	No.	O.M.:	No.
Chavez:	No. ¿Porqué agarró la pistola de la policía?	Chavez:	No. Why did you grab the gun of the police?
O.M.:	Yo quería tirar.	O.M.:	I wanted to throw/shoot *
Chavez:	Y quería tirar. Y no se apuntó la pistola a la policía. (sic)	Chavez:	And wanted to shoot. And the gun was not pointed to the police. (sic)
O.M.:	No.	O.M.:	No.
Chavez:	No.	Chavez:	No.
O.M.:	Doctor, por favor quiero aire, me estoy muriendo.	O.M.:	Doctor, please I want air, I am dying.
Chavez:	OK, ok. Yo quiero saber si usted se apuntó la pistola a la policía. (sic)	Chavez:	OK, OK. I want to know if you pointed the gun [to yourself] at the police.

O.M.:	Sí.	O.M.:	Yes.
Chavez:	Sí, ¿y usted se puntó (sic) ¿a la policía puntó la pistola? (sic) ¿Huh?	Chavez:	Yes, and you pointed it [to yourself]? (sic) at the police pointed the gun? (sic) Huh?
O.M.:	Me estoy muriendo, por favor...	O.M.:	I am dying, please...
Chavez:	Ok, ok, ok ¿puntó la pistola a la policía? (sic)	Chavez:	Ok, ok, ok, pointed the gun at the police? (sic)
O.M.:	No sé nada.	O.M.:	I don't know anything.
Chavez:	Ok.	Chavez:	OK.
O.M.:	Yo (unintelligible)	O.M.:	I (unintelligible)

(Tape turns off and on)

Chavez:	Hey, Olivera, Olivera, soy el policía-O-Oficial Chávez, otra vez, ¿ok?	Chavez:	Hey, Olivera, Olivera, I am the policeman-O-Officer Chavez, again, ok?
O.M.:	Me-me esta doliendo mucho...	O.M.:	It it hurts a lot...

Chavez:	OK, oiga, oiga yo quiero saber qué pasó, ¿ok?	Chavez:	OK, listen, listen I want to know what happened, ok??
O.M.:	Yo quiero que me curen.	O.M.:	I want them to treat me.
Chavez:	OK, ellos vas hacerlo (sic), mire cuando usted se sacó la pistola de la-la cinta (sic) de la policía...	Chavez:	OK, they are do it (sic), look when you took out the gun from the the tape (sic) of the police...
O.M.:	Me estoy muriendo...	O.M.:	I am dying...
Chavez:	Ok, mire, lo que yo quiero saber si usted se sacó (sic) la pistola de la policía?	Chavez:	Ok, look, what I want to know if you took out (sic) the gun of the police?
O.M.:	Yo no te digo nada hasta que no me curen.	O.M.:	I am not telling you anything until they treat me.
Chavez:	Mire, dígame qué pasó, yo quiero saber, mire pues no quieres que la policía sabe (sic) qué pasó contigo?	Chavez:	Look, tell me what happened, I want to know, look well don't you want the police know (sic) what happened with you?

O.M.:	¡Uuuggghhh! me duele mi panza...	O.M.:	Uuuggghhh! my belly hurts...
Chavez:	Señor, si vas a morir no quiero que la policía dice qué pasó con usted (sic), yo quiero saber qué está pasando, qué pasó con usted (sic) ¿Huh? ¿Señor, señor?	Chavez:	Sir, if you are going to die I don't want the police tell what happened with you (sic), I want to know what is happening, what happened with you (sic) Huh? Sir, sir?
O.M.:	Yo quiero que me curen.	O.M.:	I want to be treated.
Chavez:	Ok.	Chavez:	OK.
O.M.:	Por favor.	O.M.:	Please.
Chavez:	Mire, ellos están haciendo todo por usted ahorita, ¿pero dígame qué pasó? La pistola, ¿dígame qué pasó?	Chavez:	Look, they are doing everything for you right now, but tell me what happened? The gun, tell what happened?
O.M.:	Yo la jale la pistola.	O.M.:	I pulled the gun.
Chavez:	¿De la cinta (sic) de la policía?	Chavez:	From the tape [sheath] (sic) of the police?
O.M.:	Sí.	O.M.:	Yes.

Chavez:	Sí. ¿Cómo? ¿cuando ustedes estaban peleando?	Chavez:	Yes. How? when you were fighting?
O.M.:	Sí.	O.M.:	Yes.
Chavez:	Sí.	Chavez:	Yes.
O.M.:	Sí.	O.M.:	Yes.
Chavez:	¿Ustedes (sic) estaban peleando con la policía?	Chavez:	You (plural) (sic) were fighting with the police?
O.M.:	Sí.	O.M.:	Yes.
Chavez:	¿Y usted se sacó la pistola del la policía del-de la cinta? (sic)	Chavez:	And you took out the gun of the police from the tape [sheath] (sic)?
O.M.:	Sí.	O.M.:	Yes.
Chavez:	No puedo oir.	Chavez:	I can't hear.
O.M.:	Sí.	O.M.:	Yes.
Chavez:	Sí. ¿Se sacó? (sic)	Chavez:	Yes. Took it out? (sic)
O.M.:	Sí.	O.M.:	Yes.
Chavez:	Sí. ¿Qué pasó con esto, cuando se sacó? (sic)	Chavez:	Yes. What happened with this, when took it out? (sic)
O.M.:	La apunte.	O.M.:	I pointed it.
Chavez:	¿A la policía?	Chavez:	At the police?

O.M.:	Sí.	O.M.:	Yes.
Chavez:	¿Y qué pasó después de eso?	Chavez:	And what happened after that?
O.M.:	Me tiraron un balazo, es todo.	O.M.:	They shot me once, that's all.
Chavez:	Ok, ¿es todo lo qué recuerdo? (sic)	Chavez:	Ok, Is that all I remember (sic)?
O.M.:	Yeah.	O.M.:	Yeah.
Chavez:	¿Porqué se puntó la pistola a la policía? (sic)	Chavez:	Why was the gun pointed at the police? (sic)
O.M.:	Nomas pa' que, pa' que parara.	O.M.:	Just so that, that, to stop.
Chavez:	Ah, que se paro (sic). Ok. Uh, mire, mire oiga yo quiero saber...	Chavez:	Ah, that stop (sic). OK. Uh, look look listen I want to know...
O.M.:	Quiero aire, quiero aire.	O.M.:	I want air, I want air.
Chavez:	Ok, ok hey mire, ¿estaba tomando hoy?	Chavez:	OK, ok hey look, were you drinking today?
O.M.:	Me estoy ahogando...	O.M.:	I am choking...
Chavez:	¿Estaba tomando hoy?	Chavez:	Were you drinking today?

O.M.:	Sí.	O.M.:	Yes.
Chavez:	¿Cuántas?	Chavez:	How many?
O.M.:	No sé eso.	O.M.:	I don't know that.
Chavez:	¿No sé cuanto ha tomando? (sic) ¿Usa drogas?	Chavez:	I don't know how much have drunk? (sic) Do you use drugs?
O.M.:	(Unintelligible)	O.M.:	(Unintelligible)
Chavez:	¿Oiga, usa drogas?	Chavez:	Listen, do you use drugs?
O.M.:	Sí.	O.M.:	Yes.
Chavez:	¿Qué tipo de drogas usa?	Chavez:	What kind of drugs do you use?
O.M.:	Me duele...	O.M.:	It hurts...
Chavez:	Señor, ¿qué tipo de drogas usa?	Chavez:	Sir, what kind of drugs do you use?
O.M.:	Heroina.	O.M.:	Heroin.
Chavez:	¿Cuándo uso la, la última vez que uso heroina?	Chavez:	When was the, the last time you used heroin?
O.M.:	Esta noche.	O.M.:	Tonight.
Chavez:	¿Esta noche? ¿Esta usando todavia, cada dia?	Chavez:	Tonight? Are you still using, everyday?
O.M.:	Sí.	O.M.:	Yes.

Chavez:	¿Cuántas veces al día?	Chavez:	How many times a day?
O.M.:	Me duele el estomago. Me duele mucho, me duele mucho, uuuggghhh...	O.M.:	My stomach hurts. It hurts a lot, it hurts a lot, uuuggghhh...

(Unintelligible background voices)

O.M.:	Por favor, por favor me duele mucho, por favor.	O.M.:	Please, please it hurts a lot, please.
	(Tape turns off and on)		(Tape turns off and on)
O.M.:	Por favor, por favor, por favor.	O.M.:	Please, please, please.
Chavez:	Hey, señor...	Chavez:	Hey, sir...
O.M.:	Me duele...	O.M.:	It hurts...
Chavez:	Señor, ¿que estaban (sic) haciendo allí en el field (sic)?	Chavez:	Sir, what were you (plural) (sic) doing there in the field (sic)?
O.M.:	Nada.	O.M.:	Nothing.
Chavez:	Nada, ¿porqué se corrió (sic) de la policía?	Chavez:	Nothing, why did you run (sic) from the police?
O.M.:	Ya no quiero decir nada.	O.M.:	I don't want to say anything anymore.

Chavez:	¿No?	Chavez:	No?
O.M.:	Quiero que me curen, me esta doliendo mucho, por favor.	O.M.:	I want them to treat me, it hurts a lot, please.

(Unintelligible background voices)

Chavez:	¿No quiere que decir (sic) qué pasó con usted allí?	Chavez:	You don't want to tell (sic) what happened with you over there?
O.M.:	No me quiero morir, no me quiero morir.	O.M.:	I don't want to die, I don't want to die.
Chavez:	Pues si vas a morir dígame qué pasó, ¿y usted piensa que vas a morir ahorita?	Chavez:	Well if you are going to die tell me what happened, and right now you think you are going to die?
O.M.:	No.	O.M.:	No.
Chavez:	¿No, piensa que vas a morir?	Chavez:	No, do you think you are going to die?
O.M.:	¿No me vas a curar o qué?	O.M.:	Aren't you going to treat me or what?

Chavez:	Mire, piense que vas a cu...morir, (sic) es todo yo quiero saber, si usted piensa que vas a morir? ¿Piensa que vas a morir ahorita?	Chavez:	Look, think you are going to die, (sic) that's all I want to know, if you think you are going to die? Right now, do you think you are going to die?
O.M.:	Me duele mi panza, porfavor curame.	O.M.:	My belly hurtrs, please treat me.
Chavez:	¿Señor?	Chavez:	Sir?
O.M.:	Si me curas te digo todo, si no no.	O.M.:	If you treat me I tell you everything, if not, no.
Chavez:	¿Señor, quiero saber si usted piensa que vas a morir ahorita?	Chavez:	Sir, I want to know if you think you are going to die right now?
O.M.:	Yo pienso que sí.	O.M.:	I think so.
Chavez:	¿Usted pienso (sic) que sí? Ok. Mire, los médicos vas ayudar con todo lo que pueden hacer. ¿Ok?. Que pueden hacer.	Chavez:	You think (sic) so? Ok. Look, the doctors are going to help you with all they can do, Ok?. That they can do.

O.M.:	Pos ya, que me estoy muriendo, ¿No me estas viendo? pues	O.M.:	Get moving, I am dying, can't you see me? come on.
Chavez:	Ah, huh, te están dando medicinas ahorita.	Chavez:	Ah, huh, right now they are giving you medication.
O.M.:	Uuuggghhh...	O.M.:	Uuuggghhh...

(Tape finishes)

The enclosed page has the following transcription and translation:

TRANSLATION: **TRANSLATION:**

O.M.: Yo queria tirar. O.M.: I wanted to shoot.

Translators comment: The word *"tirar"* has three different meanings:

to shoot

to throw away

to drop

Because of the ungrammatical structure of this sentence, the phrase is subject to more than on interpretation.

[SEAL]

SHERRI R. CARTER
Clerk of the Court

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COURT INTERPRETER SERVICES

DECLARATION OF INTERPRETER

I, the undersigned, say: I am a Spanish/English and English/Spanish Official Court Interpreter certified by the Administrative Office of the United States Courts and I have translated the attached document(s) from English into Spanish. I declare, under penalty of perjury, that to the best of my abilities and belief, this is a true and correct translation of the English language text.

DESCRIPTION OF DOCUMENT(S)

Executed this 13th day of April, [19__] 2000, at ~~Los Angeles~~ Oxnard, California.

CAL NORMAN
Name of Interpreter [PRINT]

/s/
Signature of Interpreter

This translation was originally completed by a State of California certified court interpreter. I have listened to the entire recording and reviewed the translation making changes or amendments where I deemed necessary and thus have adopted the translation as my own

Case No.:
Ordered by:
File Name:
No. of Words

ENGCRT.94

SUPREME COURT OF THE UNITED STATES

01-1444

BEN CHAVEZ,

Petitioner,

v.

OLIVERIO MARTINEZ,

Respondent.

June 3, 2002
Case below, 270 F.3d 852

Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.